Question received by e-mail at DLSE Info Web Site:

I have a question regarding whether an employer may change wage rates for a group of its employees when it changes the scheduled workweek.

Here is the situation: A group of seventeen non-union boiler operators has been employed for a few months on eight-hour per day, five-day per week shifts refurbishing an industrial plant in California. The plant commenced 24-hour a day operations last week, and, therefore, the employer changed the operators' shifts to accommodate the 24-hour operation. Each operator's new work hours are as follows: 12 hours per day for three days for a total of 36 hours in one week, alternating with 12 hours per day for four days for a total of 48 hours in the following week.

All of the workdays are longer than 10 hours per day and, on the four-day workweeks, the total hours worked are greater than 40 hours. Therefore, new work schedule does not conform to the regularly scheduled alternative workweek provided for in Section 511 of the Labor Code (the "Section 511 Alternative Workweek"). Thus, the employer now understands that the workers must be paid one and one-half times the regular rate for all of the hours worked over eight hours per day or forty hours per week, pursuant to Section 510.

Before the employer learned of the Section 510 requirements, the employer had only been aware of the need to pay overtime for hours worked over 40 hours in one week. He had therefore informed the operators that they would receive (1) straight time pay for (a) all 36 hours in the 36-hour weeks, and (b) 40 hours of the 48-hour weeks; and (2) overtime pay (at one and one-half times the regular rate) for the last 8 hours of the 48-hour weeks ("Scheme A"). Now that the employer understands the need to pay overtime pursuant to Section 510, the employer would like to know if he may reduce the hourly wage rate for each operator so that the total wages paid to each operator— straight time plus overtime pursuant to Section 510 -- will equal the same total dollar amount as if the operator were being paid Under Scheme A (the new scheme referred to herein as "Scheme B").

Before starting employment, the operators had been told that, when the 12-hour shifts started, they would be paid according to Scheme A. After learning of the Section 510 requirements and before the 12-hour shifts were started, the employer informed the employees that they would be paid according to Scheme B and all of the employees agreed to the change.

The following illustrates how wages would be calculated under Scheme A and Scheme B for an operator whose old wage rate was $15.00 per hour. His new wage rate under Scheme B would be $13.47 per hour, but he would earn the same total dollar amount for a two-week period ($1320.) under either Scheme A or Scheme B:

(1)	Scheme A:	Week 1: 36 hours times $15:	$ 540.00
		Week 2: 40 hours times $15:	$ 600.00
		plus 8 hours times $22.50	$ 180.00
		Total:	$1320.00
(2)	Scheme B:	Week 1: 24 hours times $13.47:	$ 323.28
		plus 12 hours times $20.205:	$ 242.46
		Week 2: 32 hours times $13.47	$ 431.04
		plus 16 hours times $20.205:	$ 323.28
		Total:	$1320.06

The question we would like answered is whether the employer may reduce wage rates and pay the operators according to Scheme B. We believe he may because the reduction is not prohibited by Section 511(c), and the employer has given the operators prior notice of the change.

Because the new work schedule does not conform to Section 511 Alternative Workweeks, Section 511(c) should not apply to this situation. Section 511(c) prohibits the reduction of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule. Section 511 overall, and Section 511(c) in particular, clearly address alternative workweeks where overtime pay is not paid. But, here, such a workweek was not adopted, repealed, or nullified. Because the employer here is planning to pay overtime to the workers, his reduction of hourly pay is not being undertaken as a result of the adoption, repeal or nullification of a Section 511 Alternative Workweek schedule. Therefore, the employer should be permitted to reduce hourly pay in the same manner that any employer is always free to reduce hourly pay provided prior notice is given. (The new hourly rates will in all cases exceed the minimum wage.)

We would like clarification and confirmation from DLSE on this matter. (Of course, should the proposed reduction in wages not be permitted, the employer will promptly correct the wages for any pay period already completed under Scheme B.) Thank you in advance for your assistance.

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Response By DLSE Info:

January 21, 2002

In response to your first question, the employer may not, after the fact, change the regular hourly rate of pay promised to the employees. The overtime is due at the regular hourly rate of pay the employees were being paid at the time the work was performed.

An alternative workweek schedule is defined at Labor Code Section 500. The term means

> "any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period."

Note that the language of the definition does not limit the definition to a workweek which meets the requirements of Section 511, the definition clearly is intended to cover any "regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period".

It is apparent that the schedule your client proposes (indeed, has required the employees to work) meets that definition. It is equally true, as you state, that the "new work schedule does not conform to Section 511 alternative Workweeks"; but as mentioned above, the definition does not require that the alternative schedule meet the requirements of the Labor Code. You conclude, based on the fact that the proposed workweek does not meet the requirements of the Code, that the provisions of Labor Code § 511(c) which prohibit an employer from "reducing an employee's regular rate of hourly pay as a result of the adoption, repeal or nullification of an alternative workweek schedule" should not apply.

What you propose is that the employer may implement (without even a vote) an alternative workweek which meets all of the definitions of that term and, thereby, escape the prohibition against reducing an employee's wages because the employer has violated the law by not providing an election to the employees. You suggest that an employer may reduce an employee's pay when the employer imposes an alternative workweek if the employer is careful not to "conform" the alternative workweek to the law. The subterfuge may be accomplish by simply reducing the wages of the employees so that they are required to work the long hours but receive nothing more than what they would have received had they been scheduled for an eight-hour day schedule.

The Legislature, in adopting AB 60, made abundantly clear the fact that "The eight-hour workday is the mainstay of protection for California's working people, and has been for over 80 years." That same

Legislature allowed for very limited exceptions to the recognized 8-hour day by, among other things, allowing alternative workweeks under very limited circumstances. It is difficult to believe that the same Legislature that adopted the strong language regarding the need for the protection offered by the 8-hour day, intended that an employer could evade the provisions of the limited exception provided by the alternative workweek arrangement by simply imposing an alternative workweek which violated the law.